Filed 6/13/07 Sara H. v. Sup Ct. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SARA H. Petitioner, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent; RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Real Party in Interest.	E042538 (Super.Ct.No. RIJ110932) OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Christian F. Thierbach, Judge. Petition denied.

Dawn Shipley for Petitioner.

No appearance for Respondent.

Joe S. Rank, County Counsel, and Carole A. Nunes Fong, Deputy County Counsel, for Real Party in Interest.

Petitioner Sara H. (mother) seeks review by means of extraordinary writ (Welf. & Inst. Code, § 366.26, subd. (*l*))[1] of an order denying her reunification services with respect to her daughter N.H., and setting a selection and implementation hearing for the minor. (§§ 361.5, subd. (f), 366.26). The trial court denied services pursuant to section 361.5, subdivision (b)(10)—that reunification services as to a sibling of N.H. had been terminated due to failure to reunify and that mother had subsequently failed to make a "reasonable effort to treat the problems that led to removal of the sibling . . . ."[2] (§ 361.5, subd. (b)(10).) We deny the petition.

STATEMENT OF FACTS

Because the denial of services was based in part on mother's failure to reunify with her older child, H.H., we will briefly recite the history of that dependency, which began with her detention on October 22, 2005. The Riverside County Department of Public Social Services (department) entered the scene after mother had called police to assist her in recovering the child—one month old—from the maternal grandmother, with

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] The minute order indicates that services were denied to mother under section 361.5, subdivision (b)(2) and (b)(1), but the latter appears to be a misprint for (10). The reporter's transcript reflects the court's intent to rely on subdivision (b)(10) as well as (b)(2) (mental disability rendering parent incapable of benefiting from services), but both parties here assume that the court intended to rely solely on (b)(10). A finding under subdivision (b)(2) would require that *two evaluating experts* find the parent unable to care for the child. (See Fam. Code § 7827, referenced in § 361.5, subd. (b)(2).) As will be noted, it is unclear whether there was any such agreement here and the record references to subdivision (b)(2) may be inadvertent.

whom mother had left the child for several days. The maternal grandmother apparently resisted because she felt that mother—just 18 years of age—was not capable of caring for the infant. The grandmother reported that mother had no stable home, that she and the father were both bipolar,[3] and that mother had recently pushed her and thrown objects at her during an argument. The maternal grandmother also told the social worker that mother slept inordinately long hours, was depressed, had memory problems, and only tended to H.H.'s needs when she was reminded to do so. The grandmother also stated that H.H. had some sort of breathing problem.[4] When interviewed, mother admitted that she was not taking the prescribed medications for her mental disorder. The father (see fn. 3) informed the social worker that he too was bipolar, but that he did not take medication and coped with his illness by "listening to music and crying." Both mother and the father had criminal histories; mother's included burglary and drug offenses, while the father admitted being a sex offender.

H.H. was taken into protective custody and the court directed that mother be evaluated by two psychologists. (See fn. 2.) Considerable difficulty was encountered scheduling an appointment with the first evaluator,[5] and then mother was an hour late.

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[3] Father is no longer in the picture and is not a party to these proceedings.

[4] She stated that H.H.'s pediatrician had told them to take the baby to the hospital "if it stops breathing for more than ten minutes." However, no medical problem was ever confirmed.

[5] Mother and the father were first given appointment information on November 14. On November 22, the social worker reminded them of the importance of scheduling

[footnote continued on next page]

At the beginning of the session, the evaluator's impression of mother was that she was dominating, manipulative, and demanding. The eventual analysis was that mother was exhibiting a "moderate degree of psychological disturbance" and that her family may be demonstrating a "multi-generational pattern of poor judgment." Although the evaluator gave the opinion that mother could benefit from reunification services, she did so "with great caution" given mother's "extremely bad judgment and social immaturity even for someone of her youth."[6]

The second evaluator found that mother had "borderline" overall intellectual functioning, in that she operated essentially at a third grade level. He believed that she had some antisocial traits and poor judgment, which coupled with her intellectual limits, in his opinion, would prevent her from properly parenting a child or benefiting from reunification services.

In February 2006, before the jurisdictional/dispositional hearing was held for H.H., the social worker gave mother referrals for counseling and a parenting class. Within a few weeks, however, the leader of the parenting class reported that mother[7] did not seem to be capable of understanding the concepts explained and did not take the class

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[footnote continued from previous page]
an appointment. Mother missed a scheduled appointment on November 29. She missed another on December 4.

[6] Presciently, she also commented that "if CPS involvement is terminated, it is likely that [mother] will simply become pregnant again, repeating this cycle and make [*sic*] feeble attempts to avoid CPS thus potentially endangering another child."

[7] These comments also applied to the father, who sporadically attended.

seriously. Mother did begin counseling and attended several sessions, although the therapist felt that he had to use "very basic language" if mother were to grasp any ideas.

At the jurisdictional/dispositional hearing on April 4, 2006, the court ordered that reunification services be provided to mother. At the time, she was several months pregnant with N.H.

In mid-April, mother was dropped from her parenting class after becoming argumentative. Reports from mid-May indicated that she was inconsistent in visiting H.H. and had little interaction with the child. Mother also interpreted the baby's crankiness on one occasion as signs that she was being sexually molested; in fact, she was exhibiting a mild reaction to immunizations. Mother had missed several of her weekly appointments with her therapist, although she began attending again in June 2006. The therapist reported that she had "difficulty understanding the needs of a child" and that her "mood swings are a concern if she does not manage her medications adequately."[8] His opinion was that mother would require at least six to nine months of therapy. However, by the end of July, mother was no longer attending counseling and had stopped taking her medications.

The minor N.H. was born in October 2006 and was detained two days later. In December, the department filed a report recommending that mother's parental rights to

[8] The grandmother reported that she was not taking her medications because she thought they might harm her unborn child. Mother, however, told the social worker that she *was* taking her medications.

H.H. be terminated.[9] The department also recommended that services be denied to mother with respect to N.H. In this report, the social worker stated that mother claimed to be taking both her mental health medications and birth control. She had also recommenced individual counseling, apparently in August or September, although it is not clear whether this was the same program of counseling in which she was still involved at the time of the hearing.

At the hearing on March 7, 2007, mother testified that she had completed a parenting class and was going to counseling. (As noted above, she was not asked when the current program of counseling had begun, so the duration of her attendance is unclear.) Asked what she had learned from parenting class, she responded "What to do, what not to do. How to take care of them. What ages to feed them. Like, what is it, one through zero, bottle; then start going up to Sippy Cup, then cup." When asked what issues were being discussed in counseling, she replied, "Anything right now." She did have a residence and was receiving SSI payments. She was taking her medication and felt "Pretty good. . . . [¶] . . . I don't have no outburst or nothing."

As indicated above, the trial court terminated mother's parental rights to H.H. and denied services with respect to N.H. This petition followed.

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[9] The reports indicate that services were terminated as to the parents because *both* were found not able to benefit from services. However, the minute order reflects that services were terminated because neither parent made satisfactory progress.

DISCUSSION

Mother contends that the trial court's ruling was in error because she *had* made a "reasonable effort" to treat the primary reasons why H.H. was removed from her custody. She points to her completion of a parenting class, her initial counseling in the spring of 2006, and her renewed participation later in the year as conclusive evidence that she was making the required efforts to improve her parenting capacities. She also notes that she testified that she was regularly taking her medications.

Our review of an order denying reunification services is under the "substantial evidence" standard. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839.) The evidence supporting the ruling must be "reasonable, credible, and of solid value." (*Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474.) Furthermore, it must be sufficient to support a finding by "clear and convincing evidence." (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 98.) Judged under these standards, the ruling was appropriate.

Mother's older child, H.H., was detained out of her custody in October 2005 based on mother's inability to care for her, which in turn was due in large part to her mental issues. Despite the social worker's urging, mother failed even to make an appointment for her initial evaluation for several weeks. Although she was initially compliant with her therapy appointments after the jurisdictional/dispositional hearing, she failed to complete the required parenting class. She then missed several therapy appointments in May 2006 and also stopped taking her medications. Although she returned to therapy in June—at which time the therapist indicated that six to nine months of therapy would be

necessary for significant progress—by late July, she admitted to her social worker that she was no longer participating. Although she again entered counseling at a later date, which the record leaves unclear, she was unable, at the hearing, to identify any issues that were being addressed.

While we agree that mother had made *some* efforts, we do not agree that they were "reasonable." It is clear that for almost a year after H.H. was removed from her custody, mother failed to apply herself consistently to the mental health treatment she needed in order to safely care for a child. She delayed in her evaluations and she made multiple digressions from consistent therapy. She went on and off her medications. Even at the hearing, she could not articulate any subject on which the therapy was focusing. While we concede that there is authority to the effect that the concept of "reasonable effort" does not include the requirement of actual *progress* (*Cheryl P. v. Superior Court*, *supra*, 139 Cal.App.4th at p. 99), nevertheless there is substantial evidence that mother simply did not take her obligation seriously—at least not until the point when services were about to be terminated with respect to H.H.

Accordingly, the finding that mother had not made a reasonable effort to treat the problems, which led to the removal of H.H., must be upheld. As mother does not contend that the "best interest of the child" exception of section 361.5, subdivision (c), applies,[10] our analysis is complete.

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[10] That subdivision allows the court to order reunification services for a parent who falls under section 361.5, subdivision (b)(10), if the parent establishes that to do so would be in the "best interest of the child."

DISPOSITION

The petition is denied.

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HOLLENHORST
Acting P.J.

We concur:

McKINSTER
J.

RICHLI
J.